Filed 5/18/10 In re J.A. CA6

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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| IN RE J.A., a Person Coming Under the Juvenile Court Law. | H034505<br><br>(Santa Clara County Super. Ct. No. JV-35542A) |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>J.A.,<br><br>Defendant and Appellant. | |

A petition filed pursuant to section 602 of the Welfare and Institutions Code alleged that J.A., the minor, committed an assault with a deadly weapon (Pen. Code, § 245, subd. (a)(2))[1] for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(B)). After a contested jurisdictional hearing, the juvenile court sustained the petition. The minor was committed to the Santa Clara County Juvenile Rehabilitation Facilities-Enhanced Ranch Program for six to eight months. The court imposed numerous conditions of probation, five of which are challenged in this appeal: (1) a prohibition on

[1] Further unspecified statutory references are to the Penal Code.

remaining in any place where dangerous or deadly weapons exist (condition No. 14); (2) a prohibition on gang activity and frequenting areas of gang-related activity (condition No. 18); (3) a ban on displaying or wearing gang-related paraphernalia (condition No. 19); (4) a ban on displaying or transmitting gang-related symbols or information (condition No. 21); and (5) a restriction on attendance at court proceedings with the requirement that the minor stay at least 25 feet from any courthouse (condition No. 22).

The minor contends the conditions are unconstitutionally vague and overbroad. We will modify each of the conditions and affirm the order as modified.[2]

## BACKGROUND

On the evening of March 13, 2009, Maria D. walked through the parking lot of her apartment complex. As she walked toward her car, four males in a parked car attracted her attention. She recognized the minor, who was her neighbor, in the front passenger seat and the minor's younger brothers in the backseat. Jose Gorgua, the 20-year-old boyfriend of the boys' sister, was in the driver's seat. Gorgua revved the engine and blew exhaust in Maria's face. In response to Maria's protest, the car occupants laughed and called her "scrap," a derogatory term for a Sureño gang member or supporter. Maria pretended to call her husband and ask him to return because the car occupants were bothering her. The four males then went into the minor's apartment. Maria heard someone say, " 'Let's get the gun.' "

Maria got into her car and, after making a phone call, drove toward the parking lot exit. Gorgua jumped out of the bushes about 12 feet from her car, holding a gun. The minor stood about four feet behind him. Gorgua fired one shot at Maria and one shot up

[2] On May 17, 2010, on our own motion, we augmented the record on appeal with a corrected reporter's transcript. The reporter's declaration stated that the initial transcript contained incorrect counsel designations. We notified the parties, and they informed us that no additional briefing was necessary.

in the air. He was yelling "bitch" and "scrap" at Maria, who was not hit. Maria thought the minor looked confused as Gorgua and the minor walked away.

Maria called the police and told a responding officer that the minor and Gorgua had gone back into the minor's apartment. Police ordered the occupants out of the apartment and conducted a search. They found a rifle in the attic with the roman numerals "XIV" etched into the trigger guard. Officers also found a baseball bat with the "s's" in "Louisville Slugger" crossed out.

Officer Michael Bolton, testifying as an expert on criminal street gangs, stated that "XIV" is a Norteño symbol and that crossing out the letter "s" is a sign of disrespect to the rival Sureño gang. Gorgua and two of the minor's brothers are known to be Norteño gang members and the minor's school disciplinary record indicates a gang association. A cell phone found on the minor contained numerous Norteño-related images. Officer Bolton testified that, in his opinion, the minor was a Norteño gang member and the shooting was committed for the benefit of the gang. Officer Bolton believed the minor, who was 15 years old at the time of the shooting, was acting as "back up" for Gorgua.

## DISCUSSION

### *General Legal Principles*

Probation conditions that restrict a probationer's exercise of constitutional rights are permissible if " ' "necessary to serve the dual purpose of rehabilitation and public safety." ' " (*People v. Peck* (1996) 52 Cal.App.4th 351, 362; see also *People v. Jungers* (2005) 127 Cal.App.4th 698, 703 (*Jungers*).) "However, probation conditions that restrict constitutional rights must be carefully tailored and 'reasonably related to the compelling state interest' in reforming and rehabilitating the defendant. [Citations.]" (*Id.* at p. 704; see also *In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*).)

We note that " 'a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.' " (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.) The

juvenile court may impose "any and all reasonable [probation] conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).) Minors are deemed to be "more in need of guidance and supervision than adults" and "a minor's constitutional rights are more circumscribed." (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) Nevertheless, the probation conditions imposed on a minor may be void for vagueness or overbreadth. (See *Sheena K., supra*, 40 Cal.4th at pp. 890-891.)

The vagueness doctrine is premised on the due process concept of adequate notice. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115 (*Acuna*); accord *Sheena K., supra*, 40 Cal.4th at p. 890.) A violation of due process occurs when a statute " 'either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application[.]' " (*Acuna, supra,* 14 Cal.4th at p. 1115.) Thus, to withstand a vagueness challenge, a probation condition " 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated[.]' " (*Sheena K., supra,* 40 Cal.4th at p. 890.) Likewise, "[a] probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*Ibid*.) "A probation condition may be 'overbroad' if in its reach it prohibits constitutionally protected conduct." (*People v. Freitas* (2009) 179 Cal.App.4th 747, 750.)

If a pure question of law is presented, constitutional challenges to a probation condition may be made for the first time on appeal. (*Sheena K., supra,* 40 Cal.4th at p. 889.) We review such constitutional questions de novo. (*In re J.H.* (2007) 158 Cal.App.4th 174, 183.)

***Condition No. 14—Dangerous or Deadly Weapons***

The minor first challenges the following condition: "That said minor not own, use, or possess any dangerous or deadly weapons and not remain in any building, vehicle,

or the presence of any person where dangerous or deadly weapons exist[.]" The minor acknowledges that the prohibition on ownership of a deadly weapon is constitutionally valid, but objects to the further prohibition on remaining in any place in which a dangerous or deadly weapon exists. He argues, and the Attorney General agrees, that the condition must be limited to those locations where minor *knows* a weapon exists. We concur.

The absence of a knowledge requirement in this condition renders it unconstitutionally vague and overbroad. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 912 (*Victor*) [finding a similar provision unconstitutionally vague without a knowledge requirement]; see also *In re Justin S.* (2001) 93 Cal.App.4th 811, 816 ["Prohibiting association with gang members without restricting the prohibition to *known* gang members is ' "a classic case of vagueness." ' "]; *People v. Lopez* (1998) 66 Cal.App.4th 615, 628-629 (*Lopez*) [finding condition to be fatally overbroad because it prohibited probationer from associating with individuals not known to him to be gang members].) We will therefore modify the condition to include the element of knowledge. (See *Victor*, *supra*, 182 Cal.App.4th at p. 913 [modifying similar condition to prohibit minor's presence only where he knows weapons exist].) Condition No. 14 shall therefore read as follows: "That said minor not own, use, or possess any dangerous or deadly weapons and not remain in any building, vehicle, or the presence of any person where he knows dangerous or deadly weapons exist."

***Condition No. 18—Areas of Gang-Related Activity***

The next challenged condition states: "That said minor not participate in any gang activity and not frequent any areas of gang-related activity that are known to him or that the Probation Officer informs him to be areas of gang-related activity[.]" The minor argues that the terms "gang," "gang-related activity," and "frequent" are vague and that the condition is overbroad. The Attorney General concedes that modification is needed, but disagrees regarding the extent of the condition's infirmities.

At the outset, we agree with the minor and the Attorney General that the term "gang" is unconstitutionally vague and that the condition should incorporate the definition of gang set forth in section 186.22, subdivision (f) of the Penal Code.[3] (See, e.g., *Lopez, supra*, 66 Cal.App.4th at p. 634 [solving similar vagueness problem by incorporating statute]; *In re Vincent G.* (2008) 162 Cal.App.4th 238, 246 (*Vincent*) [following *Lopez*].) We further concur with the parties that the term "frequent" must be replaced with a more commonly understood phrase. This court has found, on two prior occasions, that "frequent" is obscure and ambiguous. (*People v. Leon* (2010) 181 Cal.App.4th 943, 952 (*Leon*) ["frequent" renders the condition unconstitutionally vague as it is "both obscure and has multiple meanings"]; *In re H.C.* (2009) 175 Cal.App.4th 1067, 1072 [noting that "frequent" is "no longer in common usage" and is "especially challenging to understand"].) We will therefore modify the condition by substituting the term "visit or remain" for "frequent."

The minor further objects to the phrase "gang-related activity" and to the discretion bestowed on the probation officer to determine the breadth of the condition's

[3] Section 186.22, subdivision (f) of the Penal Code states: "As used in this chapter, 'criminal street gang' means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity."

restrictions. We conclude that only minimal changes to the condition are needed to alleviate the remaining deficiencies.

The very fact that the probation officer is entrusted with specifying the prohibited areas of "gang-related activity" prevents that phrase from being unconstitutionally vague and overbroad. In *Victor*, *supra*, 182 Cal.App.4th 902, the First District Court of Appeal noted that the term "gang-related activity," as used in an analogous probation condition, may be problematic: "[E]ven with a knowledge requirement, the gang-related activities condition is impermissibly vague in that it does not provide notice of what areas [the minor] may not frequent or what types of activities he must shun." (*Victor*, *supra*, 182 Cal.App.4th at p. 914.) The *Victor* court found, however, that the probation condition could be saved by the addition of language authorizing the probation officer to notify the minor of the gang-related areas he must avoid. (*Id.* at p. 918.) The court noted that the probation officer clause "allow[ed] specification of exact limits to be made by the probation officer on an individualized basis." (*Ibid.*) This delegation of authority, the court noted, was consistent with *People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1358-1359 (*O'Neil*), which held that " '[t]he court may leave to the discretion of the probation officer the specification of the many details that invariably are necessary to implement the terms of probation.' " (*Victor*, *supra*, 182 Cal.App.4th at p. 919 [quoting *O'Neil*].)

We concur with the court's reasoning in *Victor*, *supra*, 182 Cal.App.4th 902. As the court explained in *O'Neil*, "[t]here are many understandable considerations of efficiency and practicality that make it reasonable to leave to the probation department the amplification and refinement of a stay-away order." (*O'Neil*, *supra*, 165 Cal.App.4th at p. 1358.) In the instant case, the juvenile court is dictating the general policy of avoiding areas of gang activity while leaving the specification of the details to the probation officer. (Cf. *Leon*, *supra*, 181 Cal.App.4th at p. 952 [amending unconstitutionally vague condition to include knowledge requirement with "the probation officer informs" language]; *Vincent*, *supra*, 162 Cal.App.4th at pp. 247-248 [same].) The

probation officer's authority to specify the restricted locations, in turn, prevents arbitrary and overbroad enforcement of the condition.

We reject the minor's contention that we must specify the type of notice that the minor receives from the probation officer. In general, probation officers are entrusted with determining "both the level and type of supervision consistent with the court-ordered conditions of probation." (§ 1202.8, subd. (a); see also *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240 [acknowledging the probation department's authority to determine specific procedures that facilitate supervision of a probationer's compliance with conditions].) The probation officer plays a particularly broad role in the supervision of a minor. (See, e.g., *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242-1243 [probation and the juvenile court act as a parent in the rehabilitation of a minor; pursuant to probation condition, officer may limit minor's association with specified people].) We see no reason to interfere with this well-established relationship of supervision and guidance by requiring formal notice procedures.

We do find, however, that additional modification of the condition would improve its clarity and serve to ensure that the probation officer's role is adequately circumscribed. In *Leon, supra*, 181 Cal.App.4th 943, 952, this court considered whether a similar condition was unconstitutionally vague. Finding that it was, we modified the condition to read as follows: "You are not to *visit or remain in any specific location* which you know to be or which the probation officer informs you is an area of criminal-street-gang-related activity." (*Ibid*., italics added.) This language makes it clear that passing through an area does not violate the condition; the minor must visit or remain in an area of gang-related activity. Moreover, by limiting the bar to "specific locations," the probation officer is precluded from designating entire towns or neighborhoods as areas of gang activity.

Accordingly, we will modify condition No. 18 to read: "That said minor not participate in any gang activity and not visit or remain in any specific location known to

him or that the Probation Officer informs him to be an area of gang-related activity. For purposes of these probation conditions, the word 'gang' means a 'criminal street gang' as defined in Penal Code section 186.22, subdivision (f)."

***Conditions Nos. 19 and 21—***
***Gang Paraphernalia and Transmitting Gang Symbols and Information***

Condition No. 19 states: "That said minor not possess, display or wear any insignia, clothing, logos, emblems, badges, or buttons, or display any gang signs or gestures which he knows or which the Probation Officer informs him to be gang-related[.]" Condition No. 21 states: "That said minor not post, display or transmit any symbols or information that the minor knows, or the Probation Officer has informed him to be gang-related[.]" As in the preceding section, the minor contends that the term "gang" is vague and that the conditions impermissibly allow the probation officer to determine the parameters of the restrictions. He further argues that condition No. 21 is unconstitutionally overbroad in that it does not specify which symbols or information are gang-related and does not limit the prohibition to communications between the minor and known gang members. The minor requests that the court strike both conditions.

The Attorney General initially responds that the minor's challenge to these conditions was forfeited by a failure to object in the juvenile court. The Attorney General contends that adequate review of the minor's argument requires the court to examine the underlying facts and circumstances of the case. We disagree. As with the preceding conditions, the minor presents a constitutional challenge that requires this court to examine a pure question of law. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 889.) We therefore proceed to the merits.

The United States Constitution protects the individual's freedom of speech and association and certain symbolic and expressive conduct. (U.S. Const., 1st & 14th Amends.; *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 772 [recognizing liberty interest in personal dress and appearance].) Thus, any condition that limits these

rights must be closely tailored to achieve a compelling state purpose; in this case, reform and rehabilitation of the minor. (*Jungers*, *supra*, 127 Cal.App.4th at p. 704; *In re Luis F.* (2009) 177 Cal.App.4th 176, 189.)

The Attorney General contends the conditions are valid because they include a knowledge requirement. We agree that the knowledge requirement, and the delegation of authority to the probation officer to specify gang indicia, aid in tailoring the probation condition to the state's purpose. (See, e.g., *Leon*, *supra*, 181 Cal.App.4th at p. 951 [adding knowledge requirement, including probation officer language, to gang paraphernalia condition to avoid unconstitutional vagueness]; *Lopez*, *supra*, 66 Cal.App.4th at p. 629 [adding knowledge requirement to condition prohibiting display of gang indicia].) Additionally, by incorporating the Penal Code's definition of gang in the text of condition No. 18, discussed above, we resolve any claim regarding the vagueness of "gang" in these conditions. We find, however, that conditions Nos. 19 and 21 must be further modified.

Symbols as commonplace and universal as certain letters of the alphabet and roman numerals bear a relationship to criminal street gangs. An item as seemingly innocuous as a red shirt, in the right context, may be viewed as "gang-related." To avoid undue restriction of the minor's constitutional rights, we find it prudent to modify condition No. 19 to target more precisely the problematic conduct. It is not the mere possession of a red shirt or display of the number 14 that puts the minor's rehabilitation at risk; rather, it is the display or use of such items and signs in a manner that indicates continued association with a criminal street gang. We will therefore strike "gang-related" and substitute the phrase, "evidence of affiliation with, or membership in, a criminal street gang." (Cf. *Leon*, *supra*, 181 Cal.App.4th at p. 951 [approving of similar language in condition modified to include a knowledge requirement]; *Vincent*, *supra*, 162 Cal.App.4th at pp. 245-246 [same].) We believe this "articulate[s] a standard of conduct of sufficient precision to inform the [minor] of what is required of him . . . and to

allow the court to determine whether a violation has occurred." (*Lopez, supra*, 66 Cal.App.4th at p. 629.)

We will modify condition No. 19 to read: "That said minor not possess, display or wear any insignia, clothing, logos, emblems, badges, or buttons, or display any gang signs or gestures which he knows or which the Probation Officer informs him to be evidence of affiliation with, or membership in, a criminal street gang."

Condition No. 21, which prohibits the posting, display or transmission of any symbols or information known to be gang-related, plainly targets speech that is ordinarily protected by the First Amendment as it covers all forms of interpersonal communication. As the minor notes, the transmission of information is broadly prohibited and "gang-related" is undefined. There is no requirement that the transmission be between gang members or that the subject be criminal activity. "Transmit," for example, means simply "to send or convey from one person or place to another." (Merriam-Webster's Collegiate Dict. (10th ed. 1993) p. 1255.) The minor could violate the condition in any number of innocuous ways—e.g., waving to an acquaintance or relative who is a gang member, informing a friend of rumored gang actions, or discussing his past gang conduct for purposes of rehabilitation from his former gang ties. In short, the condition infringes on the minor's freedom of speech and is not carefully tailored to the state's purpose of reformation and rehabilitation. As such, the condition is overbroad.

Nevertheless, we disagree with the minor that condition No. 21 cannot be cured. The manifest purpose of condition No. 21 was to prohibit the types of text messages and photographs with explicit gang content that were found on the minor's cell phone, which was seized when he was arrested. The prohibition of such messages and photographs is indisputably closely tailored to the minor's reformation and rehabilitation. We believe condition No. 21 may be rendered constitutional by restricting it to gang-related information or symbols that are posted, displayed, or transmitted on or through the minor's cell phone, and we will modify condition No. 21 to read: "That said minor not

post, display or transmit on or through his cell phone any symbols or information that the minor knows, or that the Probation Officer has informed the minor to be evidence of affiliation with, or membership in, a criminal street gang."

***Condition No. 22—Court Proceedings***

The final condition challenged states: "That said minor not attend any court proceeding, or come within 25 feet of the courthouse, unless he is attending as the subject of the court proceeding, the victim in a court proceeding, or is ordered or subpoenaed to a court proceeding." The Attorney General again concedes that modification is necessary, but disagrees with the minor regarding the extent of the necessary changes. We find the condition unconstitutionally overbroad and, as above, hold that modification is required.

As one appellate court explained, "[t]he restriction on court attendance is aimed at preventing the gathering of gang members to intimidate witnesses at court proceedings" and is "designed to address the problem of gang affiliation." (*In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1502, disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 962, fn. 2, 983, fn. 13.) "[T]he state's ability to afford protection to witnesses whose testimony is crucial to the conduct of criminal proceedings is an absolutely essential element of the criminal justice system." (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1149-1150 & fn. 15 [describing serious problem of witness intimidation by gang members].) Thus, a limitation on the minor's appearance at proceedings that involve a fellow gang member is reasonably related to both rehabilitation (limiting the minor's gang affiliation) and to an important state interest (prevention of witness intimidation and protection of the integrity of the justice system). We find, however, that the condition imposed here is not sufficiently tailored to serve the relevant state interest.

By the terms of the condition, the minor may attend only those court proceedings in which he is a "subject," "victim," or subpoenaed witness. A broad ban on attendance at court proceedings may impinge upon a number of constitutional rights. Foremost in

these circumstances is the public's right of access to criminal and civil trials. (See *Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 603 [acknowledging right of access to criminal trials; "this right of access is embodied in the First Amendment, and applied to the States through the Fourteenth Amendment"]; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1212 [the constitutional right of access extends to civil trials].) Exercise of the right is essential to freedom of speech and to freedom of the press. (See *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 577-580.)

Here, the minor is effectively barred from attending any court proceeding in which he has a legitimate interest, e.g., a newsworthy trial, or a civil, family or criminal matter involving a friend or family member. Moreover, his ability to engage in civic functions is circumscribed by the requirement that he remain at least 25 feet from any courthouse. More than one court has concluded that analogous restrictions on court appearances are unconstitutional.

In *Leon*, *supra*, 181 Cal.App.4th 943, this court modified a condition that allowed attendance at court proceedings only if the probationer was a party, defendant, subpoenaed witness, or with the prior permission of probation. (*Id*. at pp. 952-954.) We found that the clause allowing for attendance with the probation officer's permission did not rectify the impermissibly "broad sweep" of the condition. (*Id*. at pp. 953-954.) Thus, we limited the ban to those court proceedings "concern[ing] a member of a criminal street gang" or in which "a member of a criminal street gang is present." (*Id*. at p. 954.)

In *People v. Perez* (2009) 176 Cal.App.4th 380, the appellate court struck a probation condition that provided: " 'The defendant shall not attend any Court hearing or be within 500 feet of any Court in which the defendant is neither a defendant nor under subpoena. The defendant shall inform the probation officer prior to any Court appearance.' " (*Id*. at pp. 383, 386.) The court observed that the condition, as written, was neither "limited to protecting specific witnesses or parties" nor "confined to trials

involving gang members"; the condition was "so broad" that it prevented activities unrelated to future criminality. (*Id.* at p. 384.) Among other things, the court noted that "many courts are located in government complexes that house a variety of public agencies. These may include a county law library; a public defender's office; a hall of administration, housing a board of supervisors, a city council, or both; a tax collector; and a health department, to name a few." (*Id*. at p. 385.) A condition that bars a probationer from coming within a specified distance of a courthouse thus also impinges on the probationer's access to public places and participation in civic activities. (See *ibid*.)

We conclude that the limitation on court appearances must be modified to apply only to those court proceedings concerning a known member of a criminal street gang or at which a known member of a criminal street gang is present. We will strike, in its entirety, the restriction that the minor not come within 25 feet of a courthouse. Condition No. 22 shall be modified to read: "That said minor not be present at any court proceeding where you know or the probation officer informs you that a member of a criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless you are a party, you are a defendant in a criminal action, you are subpoenaed as a witness, or you have the prior permission of your probation officer."

**DISPOSITION**

We modify condition No. 14 to read as follows: "That said minor not own, use, or possess any dangerous or deadly weapons and not remain in any building, vehicle, or the presence of any person where he knows dangerous or deadly weapons exist;"

We modify condition No. 18 to read as follows: "That said minor not participate in any gang activity and not visit or remain in any specific location known to him or that the Probation Officer informs him to be an area of gang-related activity. For purposes of these probation conditions, the word 'gang' means a 'criminal street gang' as defined in Penal Code section 186.22, subdivision (f);"

We modify condition No. 19 to read as follows: "That said minor not possess, display or wear any insignia, clothing, logos, emblems, badges, or buttons, or display any gang signs or gestures which he knows or which the Probation Officer informs him to be evidence of affiliation with, or membership in, a criminal street gang;"

We modify condition No. 21 to read as follows: "That said minor not post, display or transmit on or through his cell phone any symbols or information that the minor knows, or that the Probation Officer has informed the minor to be evidence of affiliation with, or membership in, a criminal street gang;"

We modify condition No. 22 to read as follows: "That said minor not be present at any court proceeding where you know or the probation officer informs you that a member of a criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless you are a party, you are a defendant in a criminal action, you are subpoenaed as a witness, or you have the prior permission of your probation officer;"

As so modified, the judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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MCADAMS, J.